

**LEGISLATIVE  
RESEARCH COMMISSION**

---

**ARBITRATION OF STATE CONTRACTS  
AND  
SMALL CONTRACTORS' BONDING  
REQUIREMENTS**



**REPORT TO THE  
1983 GENERAL ASSEMBLY  
OF NORTH CAROLINA**



**LEGISLATIVE  
RESEARCH COMMISSION**

---

**ARBITRATION OF STATE CONTRACTS  
AND  
SMALL CONTRACTORS' BONDING  
REQUIREMENTS**



**REPORT TO THE  
1983 GENERAL ASSEMBLY  
OF NORTH CAROLINA**

A LIMITED NUMBER OF COPIES OF THIS REPORT IS AVAILABLE  
FOR DISTRIBUTION THROUGH THE LEGISLATIVE LIBRARY.

ROOM 2126, 2226  
STATE LEGISLATIVE BUILDING  
RALEIGH, NC 27611  
TELEPHONE: (919) 733-7778

OR

ROOM 500  
LEGISLATIVE OFFICE BUILDING  
RALEIGH, NC 27611  
TELEPHONE: (919) 733-9390

STATE OF NORTH CAROLINA  
LEGISLATIVE RESEARCH COMMISSION  
STATE LEGISLATIVE BUILDING  
RALEIGH 27611



January 12, 1983

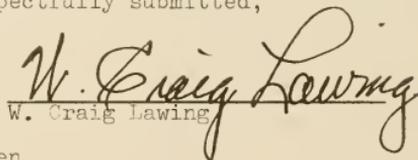
TO THE MEMBERS OF THE 1983 GENERAL ASSEMBLY:

The Legislative Research Commission herewith reports to the 1983 General Assembly on the matter of Arbitration of State Contracts/Small Contractors' Bonding Requirements. The report is made pursuant to Resolution 61 of the 1981 General Assembly.

This report was prepared by the Legislative Research Commission's Committee on Arbitration of State Contracts/Small Contractors' Bonding Requirements and is transmitted by the Legislative Research Commission for your consideration.

Respectfully submitted,

  
Liston B. Ramsey

  
W. Craig Lawing

Cochairmen

LEGISLATIVE RESEARCH COMMISSION



## TABLE OF CONTENTS

	PAGE
INTRODUCTION .....	1
SMALL CONTRACTORS' BONDING REQUIREMENTS	
<u>Introduction</u> .....	2
<u>Statutory Background</u> .....	3
<u>Governmental Assistance Programs</u> .....	3
<u>Perceived Difficulties in Obtaining Bonding</u> .....	5
<u>Other Problems</u> .....	7
ARBITRATION OF STATE CONTRACTS	
<u>Introduction</u> .....	8
<u>Committee Proceedings</u> .....	8
FINDINGS AND RECOMMENDATIONS	
<u>Small Contractors</u> .....	11
<u>Arbitration</u> .....	13
DRAFT LEGISLATION.....	15-22
APPENDIXES	
A. Legislative Research Commission Membership	
B. Membership of the Committee on Arbitration of State Contracts/Small Contractors' Bond Requirements	
C. House Joint Resolution 1301	
D. Speakers Testifying Before the Committee	



## INTRODUCTION

The Legislative Research Commission, authorized by Article 6B of Chapter 120 of the North Carolina General Statutes (G. S.), is a general-purpose legislative study group. (Appendix A contains a list of the membership of the Legislative Research Commission.)

Among the Commission's duties is to make or cause to be made, upon the direction of the Cochairmen of the Commission,

"such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner."  
G. S. 120-30.17(1)

The 1981 General Assembly authorized, in Resolution 61 (House Joint Resolution 1292), the Legislative Research Commission to study

- 1) "the potential uses and benefits of arbitration to resolve disputes under State construction and procurement contracts" and
- 2) "the bonding requirements on small contractors bidding on governmental projects" pursuant to H.J.R. 1301. The Commission directed the Committee on Arbitration of State Contracts/Small Contractors' Bonding Requirements (hereinafter referred to as "Committee"; Appendix B contains a list of the Committee's membership) to study both of these topics, which are the subject of this report.



## SMALL CONTRACTORS' BONDING REQUIREMENTS

### Introduction

The General Assembly authorized the study of small contractors' bonding requirements in bidding on public projects because, according to H.J.R. 1301 (See Appendix C), 1) "the bonding requirements levied on small contractors bidding on governmental projects create difficulties for those contractors and therefore limit competition;" 2) "small contractors, while being able to fulfill a governmental construction contract, may not have sufficient assets to meet the insurance company's requirements for the issuance of a bond;" and 3) "small contractors are a vital part of the State's economy".

H.J.R. 1292, which authorized the Legislative Research Commission to study small contractors' bonding requirements, provides that the Commission may consider the bill or resolution originally proposing the study in determining the nature, scope, and aspects of the study. With respect to small contractors - although the Committee focused its attention on the problems small contractors encounter in obtaining bonding - the scope of the study was broadened somewhat in light of the following language in H.J.R. 1301: "Section 1. That the Legislative Research Commission is authorized to study the difficulties faced by the small contractors in bidding on, qualifying for, and obtaining governmental contracts in North Carolina."

The Committee during its three meetings (on January 20, 1982, November 9, 1982, and November 23, 1982) heard testimony and discussed issues regarding 1) State statutes setting bonding requirements, 2) governmental assistance programs for small and minority contractors with respect to bonding, 3) perceived difficulties in obtaining bonding by small and minority contractors,

and 4) miscellaneous problems encountered by small contractors in State contracting. (More details on the Committee proceedings are in the minutes, which are on file in the Legislative Library. Appendix D contains a list of speakers testifying before the Committee.)

#### Statutory Background

G. S. 44A-26 provides that any department, agency, or political subdivision of the State having authority to enter into construction contracts must require of any contractor awarded a State governmental construction contract both a performance bond and a payment bond if the amount of the contract exceeds \$10,000. The performance bond, which is for the protection of the contracting body, must be for 100% of the construction contract amount and must be conditioned upon "the faithful performance of the contract in accordance with the plans, specifications and conditions of the contract." The payment bond, which protects persons furnishing materials or performing labor for a contractor or subcontractor, must also be for the entire amount of the contract and must be conditioned upon "the prompt payment for all labor and materials for which a contractor or subcontractor is liable." The bonds must be executed by one or more surety companies authorized to do business in North Carolina.

#### Governmental Assistance Programs

Committee members questioned representatives of the North Carolina Departments of Administration, Transportation, and Commerce about what is currently being done to assist small and minority contractors obtain State construction contracts.

Department of Transportation representatives told the

Committee that the Federal Highway Administration administers a Minority Business Enterprise (MBE) program in which state highway agencies may participate. The North Carolina Transportation Department began participating several years ago. The program covers only those construction projects that are at least in part federally funded, and participating state agencies must comply with federal standards regarding the program. The program consists of training programs for minority contractors and of percentages of minority and female contractors to be awarded contracts for federally funded state highway projects. Under the current North Carolina Transportation Department plan, 3.6% of the State contracts for such projects are to be awarded to minority contractors and 1% are to go to female contractors. Under this plan, the Department also prepares lists of eligible minority and female contractors; offers some instruction to minority and female contractors in accounting procedures, management techniques, plan reading, estimating, and bidding; and encourages non-minority contractors to participate in on-the-job training for minority and female contractors.

Representatives of the Department of Administration testified that the Division of Construction and the Division of Purchasing and Contracts periodically conduct workshops for all interested persons on the State construction and procurement process and on methods of obtaining State contracts, but otherwise implement no programs addressing specifically the problems of small, minority, and female contractors in obtaining State contracts.

The Business Assistance Division Office of Minority Enterprise, within the North Carolina Department of Commerce, assists small

and minority contractors by providing them with background information concerning the State contracting process and by offering consultation with respect to managerial and accounting techniques.

The Committee was also told that the Federal Small Business Administration (SBA) has developed a special bonding plan for small and minority contractors. Under this plan, the SBA guarantees participating surety companies up to 90% of losses on any bid, performance, or payment bond issued to an eligible contractor acceptable to both the SBA and the surety company. The surety company in turn pays the SBA 20% of its premium for the guarantee. To be eligible, the contractor's annual receipts for construction work may not exceed \$3.5 million, and the contract amount may not exceed one million dollars. The bonding companies - not the contractors - initiate the procedure with the SBA. According to the SBA, bonding companies in North Carolina do not frequently utilize the plan.

#### Perceived Difficulties in Obtaining Bonding

The Committee heard from a number of small and minority contractors who were concerned that they could not hope to compete with big construction companies for State contract awards for the following reasons: Before writing bonds on large State construction contracts, bonding companies require contractors to have substantial experience, current detailed financial statements, and significant capital assets. To comply with these bonding requirements, contractors must either 1) have access to great financial backing, which few do, or 2) have been awarded large contracts that have enabled the contractor to develop experience, accumulate sufficient capital, and hire bookkeepers or accountants to prepare

the detailed financial statements. The small and minority contractors testified that this situation reveals a "Catch-22" inherent in the system of State contracts bonding: Contractors can meet the requirements for bonding on large State contracts, more often than not, only by obtaining large State contracts that require bonding.

The testifying small and minority contractors argued that requiring bonding on the great majority of State construction contracts is actually counter-productive, because by effectively limiting the number of contractors who can expect to obtain State contracts the State is reducing competition and thereby increasing State construction costs. They recommended that the State help restore the competitiveness within the construction industry by ensuring that more small and minority contractors are awarded State construction contracts.

Bonding company representatives countered that nearly all responsible contractors in North Carolina actually capable of performing the work specified in State construction contracts can obtain bonding. They maintained that the bonding process screens out contractors who would prove unable to comply with the terms of State contracts and thereby cost the State and its taxpayers a lot of money.

Representatives of the departments of Administration and Transportation told the Committee that the State must protect itself from contractors who, in attempts to obtain State contracts, overcommit themselves. They added that this protection is best achieved by requiring bonds in sufficient amounts to ensure that projects will be completed.

Other speakers, including a representative of the Associated General Contractors of America, argued that the bonding process is best left in the private sector and that tampering with the current system of awarding State contracts to the lowest responsible bidder in an attempt to cure certain possible defects in the system would serve to inhibit rather than stimulate competition.

#### Other Problems

Small and minority contractors appearing before the Committee articulated other problems regarding the State construction process: State contracting agencies currently retain 5% of the amount due prime contractors awarded a State construction contract until 50% of the work is completed by the contractor and accepted as completed by the State, at which time the retainage may be reduced to 2% until the rest of the work is completed and accepted. Prime contractors, however, frequently retain twice as much on the amounts due their subcontractors. Contractors experienced in subcontract work argued that this unequal treatment of prime contractors and subcontractors in State construction projects is unjustified and works a hardship on subcontractors whose working capital - critical to the expansion or solvency of their business - is as a result tied up for long periods of time. They testified that this problem is further aggravated by many prime contractors who delay payments to the subcontractor even after the State has paid the prime contractor for work actually performed by the subcontractor.

## ARBITRATION OF STATE CONTRACTS

### Introduction

The General Assembly authorized the study of the potential use and benefits of arbitration to resolve disputes under construction and procurement contracts of the State of North Carolina and its agencies in H.J.R. 1292. The rationale for the necessity of such a study as expressed in H.J.R. 1292 as introduced was that while the construction and procurement contracts of the State and its agencies form a large part of the State's expenditures and disputes arising under them are currently resolved through long and costly litigation in the Courts, arbitration may provide a speedier and less expensive method of resolving disputes involving complex and technical issues without sacrificing fairness and equity.

The Legislative Research Commission was authorized to "make a detailed and comprehensive study of the use of final and binding arbitration in the resolution of disputes arising under construction and procurement contracts of the State of North Carolina."

### Committee Proceedings

During the portion of the meetings on Arbitration of State Contracts, the Committee heard presentations from the three interested groups: the administrative agencies, the contractors, and the arbitration professionals.

The representatives of the administrative agencies included the State Construction Officer, on behalf of the Department of Administration, and the State Highway Administrator, on behalf of the Department of Transportation. Both agencies indicated that

they have statutorily mandated and rule regulated procedures for the settlement of contract disputes which are apparently working successfully. They urged the committee to make no major changes in the dispute settlement procedures.

It was pointed out that the 1981 General Assembly had passed Chapter 577 of the Session Laws of 1981 which allowed the Department of Administration to receive and settle claims arising under state construction or repair contracts prior to the completion of those contracts. While this was being done prior to the enactment, the amendment provided clear legislative authorization for the practice. The Department of Transportation has no similar legislative provision for the settlement of disputes arising during the pendency of the contract, but it is being done, nonetheless.

Representatives of both administrative agencies informed the Committee that although they would not favor the introduction of arbitration prior to the decision on contract disputes by the respective secretary, they did not object to the interposition of arbitration before the parties went into litigation.

While there is presently no statutory prohibition for the use of arbitration to settle disputes arising under State contracts, and, in fact, Article 45A of Chapter 1 of the General Statutes incorporates the Uniform Arbitration Act into the laws of North Carolina, the members of the Attorney General's staff who provide legal representation for the administrative agencies indicated that arbitration had not been used in the past.

Representatives of the contractors who build the roads and buildings under State contracts indicated to the Committee that they are generally satisfied with the current dispute resolution systems used by the agencies. The representative of the building

contractors did inform the Committee that what problems there are in the resolution of disputes under public construction contracts are with the local governments and other political subdivisions of the State. He urged that there be a uniform system of dispute settlement provided in the General Statutes for political subdivisions.

The Committee heard from a representative of the American Arbitration Association and a professional arbitrator urging the use of arbitration in the settlement of disputes arising under State construction contracts. Two types of arbitration were urged. The first was binding arbitration as a condition precedent to litigation within the scheme of the Uniform Arbitration Act. The second was project arbitration in which all potential parties to a contract dispute, including the owner, the contractors at all levels, design professionals and engineers, and all insurers or sureties, agree in advance to be bound by the decision of a preselected arbitrator should any disputes arise either before or after the completion of a project.

The Committee concentrated on the applicability of arbitration to construction contracts rather than procurement contracts after hearing the Deputy Secretary of Administration for Governmental Operations indicate that arbitration applied to procurement contracts would encumber the contract awarding process and would greatly decrease the efficiency of the procurement procedure.



## FINDINGS AND RECOMMENDATIONS

### Small Contractors

1. The Committee finds that encouraging and promoting the use of small, minority, and women contractors in performing the work or supplying the materials specified in public contracts would serve to stimulate free and vigorous competition in North Carolina and is therefore in the best interests of the State and its citizens. THE COMMITTEE RECOMMENDS that all State agencies, institutions, and political subdivisions cooperate with the Department of Administration, the Department of Transportation, and all other State agencies, institutions, and political subdivisions in efforts to encourage and promote the use of small, minority, and women contractors in construction and purchases under public contracts. (See Draft Bill #1 on page 15.)
2. The Committee finds that a) G.S. 44A-26, enacted in 1973, set the State construction contract threshold amount exceeding which performance and payment bonds are mandatory and that considerations of inflation since that time warrant a substantial increase in the threshold amount; b) allowing public contracting bodies in their discretion to require bonds on contracts below the threshold amount diminishes the risks of loss to the State resulting from defaults on construction work under State contracts of less than the threshold amount; c) raising the threshold amount would facilitate the initiation of small contractors into the State contracting process and thereby increase competition in State contracting and d) the federal construction contract amount, which was set in 1978, is \$25,000.

THE COMMITTEE RECOMMENDS that G.S. 44A-26 be amended by raising the public construction contract threshold amount exceeding which a bond is required from \$10,000 to \$30,000; and that G.S. 44A-26 be further amended to indicate that public contracting bodies may in their discretion require bonds on public construction contracts of \$30,000 or less. (See Draft Bill #2 on page 18.)

3. The Committee finds that unequal treatment of prime contractors and subcontractors with respect to State contracts in the areas of retainage and payments for work completed result in unjustified hardships on subcontractors.

THE COMMITTEE RECOMMENDS that G.S. 143-134.1 be amended by requiring prime contractors to pay the subcontractor, within five days of receipt by the prime contractor of payments by the State, the amount owed to the subcontractor based on work completed or service provided under the subcontract; and that G.S. 143-134.1 be further amended to require that State construction contracts provide that the percentage of retainage on payments made by the prime contractor to the subcontractor shall not exceed the percentage of retainage on payments made by the State to the prime contractor. (See Draft Bill #3 on page 19.)

## Arbitration

1. The Committee finds that the Department of Transportation has been resolving disputes that arise before the completion of a contract and that although there is no specific prohibition for this procedure, there is no specific authorization for this practice. The Committee finds that the General Statutes should be amended so as to provide authorization for the process of dispute settlement during the pendency of a construction contract now used by the Department of Transportation.

THE COMMITTEE RECOMMENDS that G.S. 136-29 be amended to provide for the settlement of disputes arising prior to the completion of any contract for the construction of any State highway. (See Draft Bill #4 on page 22.)

2. The Committee finds that although the dispute resolution procedures employed by the Department of Administration and the Department of Transportation appear to be successfully resolving the vast majority of the disputes arising under State construction contracts, there are some disputes which are not resolved for a period of three or more years after they arise due, most likely, to the slow pace of litigation through the Courts. To increase the rapidity with which the disputes are resolved, without sacrificing fairness and justice, the Committee finds that a system of contract review should be interposed between the final decision of the Department and the Courts. The dispute would be decided by a newly created Board of Contract Review whose binding decision could be appealed, on limited grounds, to the Courts.

THE COMMITTEE RECOMMENDS that there be established a Board of Contract Review that shall consider those disputes still remaining unsettled after the completion of administrative review by the State department or agency involved. The Board should be patterned after the Property Tax Commission as found in Article 4, Part 2, of Chapter 143B of the General Statutes. Appeals from decisions of the Board should be to the North Carolina Court of Appeals. All State construction contracts should require the use of the Board to settle unresolved disputes instead of litigation.

SESSION 19\_\_\_\_\_

Short Title: Agency Cooperation

INTRODUCED BY:

Referred to:

1                   A BILL TO BE ENTITLED  
2 AN ACT TO REQUIRE STATE AGENCIES AND POLITICAL SUBDIVISIONS TO  
3 COOPERATE IN EFFORTS TO PROMOTE THE USE OF SMALL, MINORITY AND  
4 WOMEN CONTRACTORS IN PUBLIC CONSTRUCTION AND PURCHASING CONTRACTS.

5           Whereas, the most basic and important element of the  
6 American economic system of free enterprise is free and vigorous  
7 competition; and

8           Whereas, such free and vigorous competition increases  
9 personal initiative and individual achievement; and

10          Whereas, the majority of businesses in North Carolina are  
11 small in size or are owned by minorities or by women; and

12          Whereas, many small, minority, and women contractors  
13 able to perform the work and supply the materials specified in  
14 public contracts are unable to obtain such contracts; and

15          Whereas, encouraging and promoting the use of small,  
16 minority, and women contractors in performing the work or  
17 supplying the materials specified in public contracts would serve  
18 to stimulate free and vigorous competition in North Carolina and  
19 is therefore in the best interest of the State and its citizens;  
20 and

21          Whereas, the effective encouragement and promotion of  
22 the use of small, minority, and women contractors in State  
23 purchases and construction projects necessitates active coop-  
24 eration among State agencies, institutions, and political

1 subdivisions in efforts to accomplish this purpose; Now, therefore,  
2 The General Assembly of North Carolina enacts:

3 Section 1. Article 8 of General Statutes Chapter 143  
4 is amended by adding a section to read:

5 "§143-135.5. State policy; cooperation in promoting  
6 the use of small, minority, and women contractors; purpose.

7 It is the policy of this State to encourage and promote the use  
8 of small, minority and women contractors in State construction  
9 projects. All State agencies, institutions, and political sub-  
10 divisions shall cooperate with the Department of Administration  
11 and all other State agencies, institutions, and political sub-  
12 divisions in efforts to encourage and promote the use of small,  
13 minority, and women contractors in achieving the purpose of  
14 this Article, which is the effective and economical construction  
15 of public buildings."

16 Sec. 2. G.S. 143-48 is rewritten as follows:

17 "§143-48. State policy; cooperation in promoting the  
18 use of small, minority, and women contractors; purpose. It is  
19 the policy of this State to encourage and promote the use of  
20 small, minority, and women contractors in State purchasing of  
21 goods and services. All State agencies, institutions, and  
22 political subdivisions shall cooperate with the Department of  
23 Administration and all other State agencies, institutions, and  
24 political subdivisions in efforts to encourage the use of small,  
25 minority, and women contractors in achieving the purpose of this  
26 Article, which is to provide for the effective and economical  
27 acquisition, management, and disposition of goods and services  
28 by and through the Department of Administration."

1           Sec. 3. Article 2 of General Statutes Chapter 136 is  
2 amended by adding a section to read:

3           "§136-28.4. State policy; cooperation in promoting  
4 the use of small, minority, and women contractors. It is the  
5 policy of this State to encourage and promote the use of small,  
6 minority, and women contractors in the construction, alteration,  
7 and maintenance of State roads, streets, highways, and bridges  
8 and in the procurement of materials for such projects. All State  
9 agencies, institutions, and political subdivisions shall coop-  
10 erate with the Department of Transportation and all other State  
11 agencies, institutions, and political subdivisions in efforts  
12 to encourage and promote the use of small, minority, and women  
13 contractors in such State construction, alteration, maintenance  
14 and procurement."

15           Sec. 4. This act is effective upon ratification.

16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



SESSION 19 \_\_\_\_\_

Short Title: Construction Bond Threshold

INTRODUCED BY:

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO INCREASE FROM TEN TO THIRTY THOUSAND DOLLARS THE  
3 THRESHOLD AT WHICH PUBLIC BODIES MUST REQUIRE PAYMENT AND  
4 PERFORMANCE BONDS OF CONTRACTORS AWARDED PUBLIC CONSTRUCTION  
5 CONTRACTS AND TO PERMIT PUBLIC BODIES TO REQUIRE BONDS FOR  
6 PUBLIC CONTRACTS OF LESS THAN THIRTY THOUSAND DOLLARS.

7 The General Assembly of North Carolina enacts:

8 Section 1. G. S. 44A-26(a) is amended by rewriting the  
9 first three lines to read:

10 "§44A-26(a). Bonds Required.--(a) A contracting body may  
11 in its discretion require of any contractor who is awarded a  
12 construction contract in the amount of thirty thousand dollars  
13 (\$30,000) or less and shall require of any contractor who is  
14 awarded a construction contract which exceeds the amount of  
15 thirty thousand dollars (\$30,000) the following bonds:".

16 Sec. 2. This act is effective upon ratification.  
17  
18  
19  
20  
21  
22  
23  
24



INTRODUCED BY:

DRAFT BILL #3

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO AMEND G.S. 143-134.1 TO REQUIRE TIMELY PAYMENTS TO  
3 SUBCONTRACTORS AND TO PREVENT RETAINAGE PERCENTAGES ON SUBCON-  
4 TRACT PAYMENTS TO EXCEED THOSE ON PRIME CONTRACT PAYMENTS.

5 Section 1. G.S. 143-134.1 is amended by rewriting the  
6 catchline to read:

7 "§143-134.1. Interest on final payments due to prime  
8 contractors; payments to subcontractors."

9 Sec. 2. G.S. 143-134.1 is further amended by designating  
10 the present section as subsection (a) and adding subsections (b)  
11 and (c) to read:

12 "(b) Within five (5) days of receipt by the prime  
13 contractor of each periodic or final payment, the prime contractor  
14 shall pay the subcontractor the proportionate share owed to the  
15 subcontractor based on work completed or service provided under  
16 the subcontract. Should any periodic or final payment to the  
17 subcontractor be delayed by more than five (5) days after receipt  
18 of periodic or final payment by the prime contractor, the prime  
19 contractor shall pay the subcontractor interest, beginning on  
20 the sixth day, at the rate of one percent (1%) per month or  
21 fraction thereof on such unpaid balance as may be due.

22 (c) The percentage of retainage on payments made by  
23 the prime contractor to the subcontractor shall not exceed the  
24 percentage of retainage on payments made by the owner to the

1 prime contractor. Any percentage of retainage on payments made  
2 by the prime contractor to the subcontractor that exceeds the  
3 percentage of retainage on payments made by the owner to the  
4 prime contractor shall be subject to interest to be paid by the  
5 prime contractor to the subcontractor at the rate of one percent  
6 (1%) per month or fraction thereof."

7 Sec. 3. Article 2 of General Statutes Chapter 136 is  
8 amended by adding a section to read:

9 "§136-29.1. Payments to subcontractors. (a) Within  
10 five (5) days of receipt by the contractor of each periodic or  
11 final payment from the Department of Transportation, the con-  
12 tractor shall pay the subcontractor the proportionate share owed  
13 to the subcontractor based on work completed or service provided  
14 under the subcontract. Should any periodic or final payment to  
15 the subcontractor be delayed by more than five (5) days after receipt  
16 of periodic or final payment by the contractor, the contractor  
17 shall pay the subcontractor interest, beginning on the sixth day,  
18 at the rate of one percent (1%) per month or fraction thereof  
19 on such unpaid balance as may be due.

20 (b) The percentage of retainage on payments made by  
21 the contractor to the subcontractor shall not exceed the percen-  
22 tage of retainage on payments made by the Department of Trans -  
23 portation to the contractor. Any percentage of retainage on  
24 payments made by the contractor to the subcontractor that exceeds  
25 the percentage of retainage on payments made by the Department  
26 of Transportation to the contractor shall be subject to interest  
27 to be paid by the contractor to the subcontractor at the rate  
28 of one percent (1%) per month or fraction thereof.

1            Sec. 4. This act is effective upon ratification and  
2 shall apply only to contracts executed on or after that date.

3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



---

SESSION 19 \_\_\_\_\_

---

INTRODUCED BY:

---

Referred to:

---

1                                   A BILL TO BE ENTITLED  
2 AN ACT TO PROVIDE FOR THE SETTLEMENT OF CLAIMS ARISING PRIOR TO  
3 THE COMPLETION OF CONTRACTS FOR THE CONSTRUCTION OF STATE HIGHWAYS.  
4 The General Assembly of North Carolina enacts:

5                   Section 1. G. S. 136-29(a) is amended by adding a  
6 new sentence, at the beginning, to read:

7                   "When a claim arises prior to the completion of any contract  
8 for the construction of any State highway awarded by the Depart-  
9 ment of Transportation, the contractor may submit a written claim  
10 to the Engineer for decision."

11                   Sec. 2. This act is effective upon ratification.  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24



## LEGISLATIVE RESEARCH COMMISSION

1981 - 1982

## MEMBERSHIP LIST

	<u>Business Address</u>	<u>Telephone No.</u>
Speaker Liston B. Ramsey Co-Chairman	Walnut Creek Road Marshall, N. C. 28753	(704) 649-3961
Sen. W. Craig Lawing Co-Chairman	5521 Belhaven Blvd. Charlotte, N. C. 28216	(704) 399-6372
Rep. Chris S. Barker, Jr.	Post Office Box 988 New Bern, N. C. 28560	(919) 633-1333
Sen. Henson P. Barnes	Post Office Box 1582 Goldsboro, N. C. 27530	(919) 735-6420
Rep. John T. Church	Post Office Box 947 Henderson, N. C. 27536	(919) 492-8111
Rep. Gordon Greenwood	Box 487 Black Mountain, N. C. 28711	(704) 669-7961
Rep. John J. Hunt	Peachtree Road Lattimore, N. C. 28089	(704) 434-6853
Sen. Carolyn Mathis	Post Office Box 30035 Charlotte, N. C. 28230	(704) 379-7131
Sen. William D. Mills	Post Office Box 1238 Swansboro, N. C. 28584	(919) 326-2177
Rep. Lura S. Tally	3100 Tallywood Drive Fayetteville, N. C. 28303	(919) 484-4868
Sen. Russell Walker	Post Office Box 1831 Asheboro, N. C. 27203	(919) 625-6177
Sen. Robert W. Wynne	Post Office Box 12195 Raleigh, N. C. 27605	(919) 755-1480



LEGISLATIVE RESEARCH COMMISSION  
STUDY COMMITTEE ON  
ARBITRATION/SMALL CONTRACTORS' BONDING REQUIREMENTS  
MEMBERSHIP LIST

Legislative Research Commission Member: Senator William D. Mills  
Box 1238  
Swansboro, N. C. 28584  
Business Phone: (919) 326-2177  
Home Phone: (919) 743-5226

Senate Appointees:

Senator Conrad R. Duncan, Cochairman  
Route 1, Box 282  
Stoneville, N. C. 27048  
Business Phone: (919) 623-9166  
Home Phone: (919) 627-1326

Senator Julian R. Allsbrook  
P. O. Drawer 40  
Roanoke Rapids, N. C. 27870  
Business Phone: (919) 537-7075  
Home Phone: (919) 537-4464

Mr. Hugh Griffin  
100 S. Scale Street  
Reidsville, N. C. 27320  
Telephone: (919) 349-6251

House Appointees:

Representative Robert C. Hunter, Cochairman  
P. O. Drawer 1330  
Marion, N. C. 28752  
Business Phone: (704) 652-2844  
Home Phone: (704) 652-4397

Representative Allen Adams  
Box 389  
Raleigh, N. C. 27602  
Business Phone: (919) 828-0564  
Home Phone: (919) 821-7763

Representative Harry E. Payne, Jr.  
P. O. Box 1147  
Wilmington, N. C. 28402  
Business Phone: (919) 762-5505  
Home Phone: (919) 256-2497



GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 1981

HOUSE JOINT RESOLUTION 1301

Sponsors: Representatives Nye, Taylor and Wright.

Referred to: Rules.

June 24, 1981

1 A JOINT RESOLUTION AUTHORIZING THE LEGISLATIVE RESEARCH  
2 COMMISSION TO STUDY THE BONDING REQUIREMENTS ON SMALL  
3 CONTRACTORS BIDDING ON GOVERNMENTAL PROJECTS.

4 Whereas, the bonding requirements levied on small  
5 contractors bidding on governmental projects create difficulties  
6 for those contractors and therefore limit competition; and

7 Whereas, small contractors, while being able to fulfill  
8 a governmental construction contract, may not have sufficient  
9 assets to meet the insurance company's requirements for the  
10 issuance of a bond; and

11 Whereas, small contractors are a vital part of the  
12 State's economy;

13 Now, therefore, be it resolved by the House of Representatives,  
14 the Senate concurring:

15 Section 1. That the Legislative Research Commission is  
16 authorized to study the difficulties faced by the small  
17 contractors in bidding on, qualifying for, and obtaining  
18 governmental contracts in North Carolina. The Commission may  
19 also study the feasibility of establishing a self-insurance fund,  
20  
21

1 managed by the Department of Commerce, to provide bonds for small  
2 contractors bidding on governmental construction contracts.

3 Sec. 2. The Legislative Research Commission may make an  
4 interim report of the results of any study to the 1982 General  
5 Assembly and shall make a final report of the results of any  
6 study to the 1983 General Assembly.

7 Sec. 3. This resolution is effective upon ratification.  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

## SPEAKERS TESTIFYING BEFORE THE COMMITTEE

Small Contractors' Bonding Requirements

Mr. Luther H. Berrier, Jr., Department of Transportation  
Mr. Buie Costen, Department of Administration  
Mr. Albert Calloway, Department of Commerce  
Mr. William A. Perry, Jr., Department of Transportation  
Mr. Berry G. Jenkins, Jr., Department of Transportation  
Mr. Julian Brown, Department of Commerce  
Mr. Ray DeBruhl, Department of Administration  
Mr. Henry C. Clegg, Associated General Contractors  
Mr. Lester W. Owen, Durham County Attorney  
Mr. Wilson Lacy, B.J.L. Construction Company  
Mr. Sam Jones, Sam Jones Electrical Company  
Mr. C. G. Washington, Washington Concrete, Inc.  
Mr. Phillip Cooper, Cooper & Cooper, Inc.  
Mr. Malachi Greene, Charlotte, N. C.  
Mr. Henry Bordeaux, Durham Business & Professional Chain  
Mr. Leon Clark, The Bond Exchange  
Mr. Charles Gordon, Associated General Contractors  
Mr. Ernest Ball, N. C. League of Municipalities

Arbitration

Mr. Henry C. Clegg, Associated General Contractors  
Mr. Charles E. Gordon, Associated General Contractors  
Mr. Alan Briggs, North Carolina Academy of Trial Lawyers  
Mr. Buie Costen, Department of Administration  
Mr. Lester W. Owen, Durham County Attorney  
Mr. J. K. Sherron, Department of Administration  
Mr. Ray DeBruhl, Department of Administration  
Mr. Billy Rose, State Highway Administrator  
Mr. Gene Smith, Department of Transportation  
Mr. Mark Sholander, American Arbitration Association  
Mr. Berry G. Jenkins, Jr., Department of Transportation  
Mr. John Ramsey, Matthews, N. C.

